IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 347 OF 1992

The State of Maharashtra ..Appellants

versus

Sou. Jagubai V. Gaikwad ..Respondent

Mr. S. N. Gawade, AGP for the Appellants.

Mr. L. S. Gaikwad for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 8TH APRIL,2005

ORAL ORDER :

1. Heard learned AGP for the State and learned counsel for the Respondent.

2. State has filed this appeal challenging the Order of the Reference Court - Civil Judge, Senior Division, Satara dated 28.2.1991 awarding Rs.22,926.50 paise more than as compensation to whatever was awarded by the SLAO.

3. Different pieces of land from different survey numbers were acquired. Claimants had varied shares in those land, quality of the land was also taken. By consent, the evidence recorded in other

Land Reference Nos. 5/87 and 7/87 was treated as evidence. However, all that evidence tendered by the claimant was in the form of certified copies of Index II, viz. Exhibits 19, 20, 21, 22 and 23. The learned AGP therefore contended that producing certified copies of Index is not sufficient either the sale deeds original or certified copy should have been produced and oral evidence to show similarities in the land acquired and which were subject matter of the suit, should have been adduced. Therefore, according to him the reference court committed an error in relying upon copies of Index 2.

4. There is considerable force in the submissions. However, when once both the parties before the Reference Court agreed that evidence recorded in LAR No. 7/87 be treated as a evidence, then perhaps it appears that the claimant was misled and therefore he did not produce certified copies or did not tender any other oral evidence. It is true that reference court has enhanced the compensation as per paragraph 22 when the total land acquired was from different survey numbers and the difference between the price or compensation awarded by the reference court and the SLAO is Rs.22,926.50 paise, it cannot be said to be a much difference. Therefore, in the circumstances though the Index II

entries cannot be relied upon, the facts remains that the claimant was entitled to some enhancement. Therefore, in my opinion, additional compensation of Rs.13,000/- in all would have been proper. I therefore, pass the following order :

ORDER

. Appeal is partly allowed.

. Claimant will be entitled to recover Rs.13,000/- only in addition to the compensation awarded by the SLAO. Consequently, benefits shall stand reduced proportionately.

. No order as to costs.

8.04.2005 (D.G. DESHPANDE, J.)